

POA #24

May 2013

# City of San Jose

Joe Guerra

## What is the City's Financial Condition?

Who has the authority to set spending priorities and make decisions for the City of San Jose budget?

Anyone the residents of San Jose delegate that authority to.

Sometimes it is the voters themselves.

Sometimes it is the City Manager.

Sometimes it is the Mayor.

Sometimes it is the Mayor and City Council.

Sometimes it is an Independent Arbitrator.

## What is the City's Financial Condition?

We don't have money to pay officers enough to keep a well-trained police force but we have enough money to pay for the renovation of the City Hall Bamboo Courtyard.

“Capital Contributions: City Hall Bamboo Courtyard Renovation. \$250,000.”<sup>1</sup>

If you read the detail page you note that the reason relates to root intrusion, but the actual expenditure includes an entirely new shade structure.

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<sup>1</sup> Page VII-125 CMO Proposed Budget 5/1/13

## What is the City's Financial Condition?

So what is the City's Financial condition? What does a review of the City's own documents suggest?

A look at the City's Financial Condition based upon:

1. The City Manager's February 28 Budget Request and
2. the City Manager's May 1 Proposed Budget.

NOTE: The Proposed Budget is a six day old document reviewed without the dozens of staff and analysts that Manager has. While there may be an error or misread of the data and narrative within the 914 pages, there is a preponderance of evidence that there are resources available to the City to deal with police compensation requests.

I have broken this question into three sections based upon City staff presentation regarding arbitration.



## What is the City's Financial Condition?

Subject #1

Per Ballot Measure:

Primary Compensation Factors (Section 1111(f))

§ Primary factors in deciding compensation:

- City's financial condition <sup>2</sup>

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<sup>2</sup> City Presentation Regarding the Interest Arbitration Process 4/29/13

## What is the City's Financial Condition?

1. *"An increase of \$51.0 million from the February Forecast is included bringing the estimated 2013-2014 Beginning Fund Balance from \$50.8 million to \$101.8 million...in 2012 2013 that will be available for use in 2013-2014."*<sup>3</sup>

Apparently the City will end the year with \$102M in unexpended funds (over 10% of the budget). So for example, if the City had reinstated the POA 10% reduction in the current year the City still would have ended the year with over \$80M in ending fund balance (still 10% of budget). Is that an acceptable financial condition?

2. *"To this end, we have set aside \$13.7 million in one-time funds to address the projected shortfall in 2014-2015."*<sup>4</sup>

This is a discretionary decision. Also, if this is approved the year 2 projected deficit of \$13.7M disappears and can no longer be used as a way to claim dire financial condition. It is important to point out that even *if* the projected shortfall in 2014/2015 materializes these funds would not be needed for even budgetary cash flow purposes until June of 2015. CMO is proposing to set aside in June of 2013 funds that may or not be needed in June of 2015.

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<sup>3</sup> Page VI-8 CMO Proposed Budget 5/1/13

<sup>4</sup> Page 2 CMO Proposed Budget 5/1/13

## What is the City's Financial Condition?

3. On top of \$13.7M above there is a 3% contingency reserve (\$29.3M). While some may suddenly be suggesting that this is “low for a city our size”<sup>5</sup> It is worth pointing out that it is a % goal and not a hard number so the real number has grown over time and the 3% rule has been in place for decades.
4. There is also, “We will set aside one time reserve funding for budget stabilization.”
5. There is also Emergency Reserve Fund has another \$3,381,532<sup>6</sup>

How many layers of contingency and set aside do we need to be prudent and when does it become miserly?

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<sup>5</sup> Debra Figone arbitration testimony 5/6/13

<sup>6</sup> Page XI-33 CMO Proposed Budget 5/1/13

## What is the City's Financial Condition?

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### ***Long-Established Practice of Creating Reserves***

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- **Future Deficit Reserve:** \$29.4MM established in FY 2012-2013 to address forecasted General Fund shortfall and other funding needs in FY 2013-2014
- **Ending Fund Balance Reserve:** \$12MM established in FY 2012-2013, using projected expenditure savings/excess revenues
  - ✓ Reserve designed to be used as a funding source for FY 2013-14
- **Police Department Overtime Reserve:** \$4.0 million established in FY 2012-2013, to address anticipated overtime needs in 2013-2014
- **Successor Agency City Legal Obligations Reserve:** \$7.5 million established in FY 2012-2013 to address potential funding needs
- **Workers' Compensation/General Liability Catastrophic Reserve:** Increased by \$3 million in FY 2012-2013 to address potential funding needs



## What is the City's Financial Condition?

6. *Transfer to the Community Facilities Revenue Fund- Reduces the General Fund subsidy to the Community Facility Revenue Fund (Hayes Mansion) by \$300,000 to reflect lower anticipated debt service payments. The anticipated refunding of outstanding fixed rate and variable rate bonds issued to finance the construction of City Hall and associated parking garage is projected to generate savings between \$3.5 million to \$7.2 million in the General Fund. These savings will be recommended to be used reduce the City's outstanding variable rate debt, specifically the 2008D Lease Revenue Bonds issued for the Hayes Mansion improvements. The savings will be recommended to be used to pay down a portion of the \$53.7 million in outstanding principal, which will reduce annual debt service payments by approximately \$300,000 to \$600,000... ”*<sup>8</sup>

Trading \$3.5M to 7.2M in available funds for a \$300,000 annual savings?

City appears to also still be prepaying pension contribution.

An analogy: 30 year mortgage v 15 year mortgage and your ability to pay your child's college tuition. It is all about priorities.

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<sup>8</sup> Page 20 CMO Proposed Budget 5/1/13

## What is the City's Financial Condition?

7. *"We will continue services that had been funded on a one-time basis in 2012 2013."*

Again this is placing something into the base budget suggesting that funds are not available when you could legitimately be asking the question of are these services that were only afforded "one time" status last year suddenly are more important than being competitive in the workplace with compensation in a high priority service area.

8. When claiming there is a \$2.6M deficit projected next year. The Manager's balancing strategy then suggests spending over \$15M on infrastructure (capital items) and over \$10M on service level enhancements and over \$20M on reserves.

It is important to point out that the "deficit" only exists because of the proposal to create a whole new reserve called the Budget Stabilization Reserve in the amount of \$4M. If it was not proposed there would be a surplus next year.

## What is the City's Financial Condition?

9. *“Budget Stabilization Reserve Establishes a Budget Stabilization Reserve of \$4.0 million to help ensure resources are available to address unforeseen changes in revenues or expenditures in any given year. Given the size of the City’s budget and the relatively small General Fund Contingency Reserve, this proposed reserve is considered a prudent investment, serving as a small buffer, or bridge funding to balance the budget, if necessary. In the future, the Administration recommends that the City Council consider changing the Operating Budget and Capital Improvement Program Policy (Council Policy 1-18) to broaden the use and distribution of excess fund balance to allow for all available funds in any year to be allocated to a Budget Stabilization Reserve, as appropriate.”*<sup>9</sup>

How many different reserves being used for the same thing are necessary?

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<sup>9</sup> CMO Proposed Budget 5/1/13

## What is the City's Financial Condition?

10. *“Successor Agency Legal Obligations Reserve - An increase in the Successor Agency City Legal Obligations Reserve of \$2.5 million will bring the total reserve to \$10.0 million. Funds are recommended to be set aside in an amount equivalent to the value of loans made between the City and former Redevelopment Agency as part of the SERAF Loan in 2011. Although loans such as these were invalidated by AB X! 26, the approval of AB 1484 outlined that such loans may be deemed an enforceable obligation if they meet certain requirements. As the Administration continues to work through these requirements and seek clarification from the state, this action proactively sets aside funds since these loans are due and payable by June 30, 2015.”*<sup>10</sup>

Is it reasonable to assume that these funds (\$10M) that are not needed until June 30, 2015 will immediately be freed up upon resolution of current litigation and could be available for some sort of tiered compensation agreement?

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<sup>10</sup> CMO Proposed Budget 5/1/13



## What is the City's Financial Condition?

11. *"The liquidation of various reserves is projected to generate \$36.6 million for use in 2013-2014, the largest of which include: Future Deficit Reserve of \$29.4 million."*<sup>11</sup>

This is a misleading characterization giving the impression that they are "liquidating" the entire \$29.4M when in fact they are placing \$13.7M of it right back in the same titled reserve and placing another \$4M of it into an almost identical reserve with a different title of Budget Stabilization Reserve.

12. When talking about changes to previously adopted strategies CMO states, *"The guideline to focus on protecting vital core City services for both the short- and long-term has also been eliminated in recognition of the City's improved financial position that will not require the service reductions that have been necessary in recent years."*<sup>12</sup>

Apparently the Fiscal Condition of the City is so good that we can move on to "non core" service delivery? Last year the City was trying to protect core services and now you are not – shouldn't the core services be first to be restored to earlier levels?

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<sup>11</sup> Page 19 CMO Proposed Budget 5/1/13

<sup>12</sup> Page 12 CMO Budget Request 2/28/13

## What is the City's Financial Condition?

13. *“Another major component of Fiscal Reform Plan is a revenue strategy, specifically a potential increase in the local Sales Tax of up to 1/2%. The City Council decided not to pursue this step for the current year, but it could revisit bringing such a measure to San Jose voters for their approval in the coming year. These two elements together would generate additional resources of approximately \$85 million to \$122 million annually, depending on the Sales Tax rate increase, and could enable significant improvements in the City's capacity to restore and enhance delivery of critical services.”*<sup>13</sup>

Since the Mayor and Council were so committed to a balanced approach would they agree to fund requested reinstatement of cut and raise if these measures occur?

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<sup>13</sup> Page 21 CMO Proposed Budget 5/1/13

## What is the City's Financial Condition?

14. *“The remaining economically sensitive capital revenue categories are directly linked to private development activity. Based on projections provided by the Planning, Building and Code Enforcement Department, construction activity valuation is projected to continue at slightly lower levels than experienced last year: \$800 million for 2012-2013, or an 11% decrease compared to \$894 million in 2011-2012. This level of activity is expected to drop to \$775 million in 2013-2014 and 2014-2015, and then drop slightly again to \$750 million for 2016-2017 and 2017-2018.”*<sup>14</sup>

This shows that “projections” have more implications than just the property tax revenues that have been discussed by others. I do not believe I have seen indicator or news story that suggests that construction activity is decreasing locally. From my experience construction costs from bids are escalating which is usually a sign that more construction not less is occurring.

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<sup>14</sup> Page 23 CMO Budget Request 2/28/13

## What is the City's Financial Condition?

15. *“Property Tax receipts of \$204.0 million are projected for 2012-2013, which represents 1.1% growth from the prior year and is slightly above the modified budget estimate of \$202.9 million. This projected increase continues the modest growth seen in 2011-2012, where actual Property Tax receipts were up 2.3% year-over-year for the first time since 2008-2009.”*<sup>15</sup>

The City is projecting a 50% decline in growth in the current year from previous year, which does not seem to track with general knowledge about property values in the region. If in fact this is too conservative then it sets the base for next year too low as well.

16. *“Currently Transient Occupancy Tax (TOT) receipts in 2012- 2013 are projected to reach \$10.1 million, reflecting an increase of 12.4% from the Transient Occupancy Tax Collection Trend 2011-2012 collection level.”*<sup>16</sup>

According to recent news interviews by Team San Jose current hotel revenues are tracking at 22% above last year. Why are these projections so different from those numbers?

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<sup>15</sup> Page I-29 CMO Budget Request 2/28/13

<sup>16</sup> Page VI-19 CMO Proposed Budget



## What is the City's Financial Condition?

17. Re: TOT, *“In 2013 2014, growth of 5.0% from the 2012 2013 estimate is anticipated which allows for the stabilization of the current high level of growth and allow for potential disruption associated with the ongoing Convention Center renovation and expansion project. The completion of the Convention Center renovation and expansion project in late 2013, which will add 125,000 square feet of new flexible space as well as improvements to the existing space, is expected to drive additional room night activity in the mark.”*<sup>17</sup>

So we had somewhere between 14% and 22% growth this year while the convention center was under constructions and next year when construction will not only cease to be an inhibition, the expanded space will help drive growth, but we are projecting a dramatic decrease in growth rate?

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<sup>17</sup> Page VI-19 CMO Proposed Budget

## What is the City's Financial Condition?

How easy would it be to paint a different picture of City's financial condition?

	2013/2014	2014/2015	2015/2016	2016/2017	2017/2018
CMO Proposed Budget	-\$3.8	-\$13.7	\$2.0	-\$4.7	-\$6.0
With no Budget Stabilization Reserve and Council adopts Future Deficit Reserve recommendation	\$0.2	\$0.0	\$2.0	-\$4.7	-\$6.0

If you don't create a brand new reserve for "Budget Stabilization" and you believe that the Council adopts the CMO's recommendation on Future Deficit Reserve you have no deficits for three years and only very small projected deficits in years 4 and 5 with intentionally conservative revenue projections for those years. And this all assumes that all the spending recommendations from the CMO are actually adopted by Council and more important than any other possible spending.

## What is the City's Ability to Pay?

### Subject #2

#### Primary Compensation Factors (Section 1111(f))

##### § Primary factors in deciding compensation:

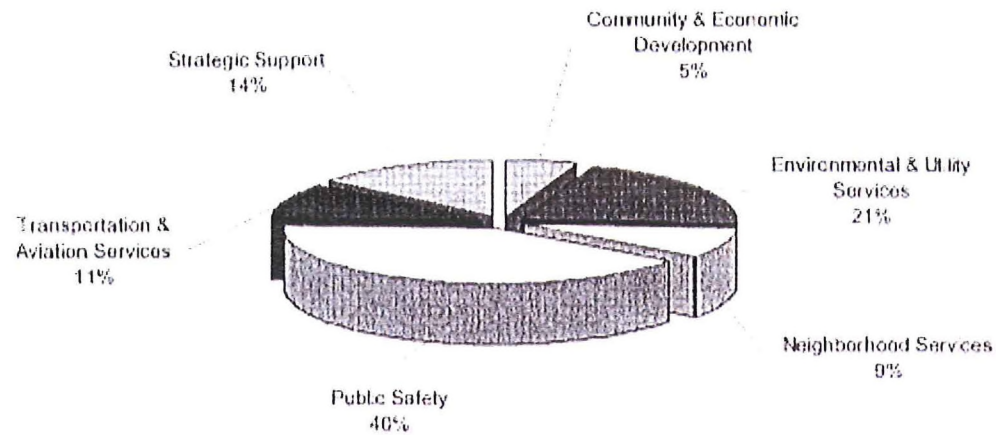
- City's ability to pay for employee compensation from ongoing revenues without reducing City services<sup>18</sup>

A few words about "One Time v. Ongoing

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<sup>18</sup> City Presentation Regarding the Interest Arbitration Process 4/29/13

## What is the City's Ability to Pay?



	2011-2012 Actual 1	2012-2013 Adopted 2	2013-2014 Forecast 3	2013-2014 Proposed 4	% Change (2 to 4)
<b>Dollars by CSA</b>					
Community & Economic Development	\$ 70,368,977	\$ 59,613,941	\$ 58,360,382	\$ 59,244,939	(0.6%)
Environmental & Utility Services	213,236,136	237,771,054	237,723,300	241,372,270	1.5%
Neighborhood Services	94,328,660	99,764,743	102,519,363	104,586,243	5.4%
Public Safety	431,483,873	433,556,064	448,706,656	458,920,676	5.8%
Transportation & Aviation Services	114,347,410	120,789,616	118,319,107	119,885,378	(0.7%)
Strategic Support	138,693,400	155,920,091	153,425,169	160,511,540	2.9%
<b>Total</b>	<b>\$ 1,062,356,656</b>	<b>\$ 1,106,416,019</b>	<b>\$ 1,119,165,017</b>	<b>\$ 1,143,921,065</b>	<b>3.4%</b>

\$1.1 Billion. It appears to be ongoing.

<sup>19</sup> Page VII-4 CMO Proposed Budget 5/1/13



## What is the City's Ability to Pay?

According to Mayor Reed, Public Safety is the City's top priority.<sup>20</sup>

It appears that the budget contains \$700 Million on non public safety expenditures.

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<sup>20</sup> Mayor's presentation at Community Budget Forum 5/2/13

## What is the City's Ability to Pay?

1. As an overall point, what the voters approved states “without reducing City services” which must be interpreted as written which clearly references current service levels, NOT returning to 2011 service levels or adding new services, which the CMO is placing in the base budget as if it is a foregone conclusion.

Standard in Charter language is “without reducing City services” not the addition of services.

2. *“The Proposed Budget also reflects the ongoing commitment to operate the four new branch libraries and a new community center...”*<sup>21</sup>

The proposed budget suggests that somehow these expenditures reside in the base budget and therefore funds do not exist for the desired compensation requests.

If the City keeps choosing to increase services in other areas you could theoretically never have funds to deal with compensation issues.

According to Mayor Reed, Public Safety is the City's top priority.<sup>22</sup>

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<sup>21</sup> Page 2 CMO Proposed Budget 5/1/13

<sup>22</sup> Mayor's presentation at Community Budget Forum 5/2/13

## What is the City's Ability to Pay?

3. When discussing the creation of funding for employee compensation increases CMO states, *“Moving forward, it is important to recognize that a meaningful long-term fiscal planning strategy needs to incorporate some level of employee compensation adjustments within the City’s ability to afford them.”*

*Although adding a small set-aside for potential limited salary adjustments in this Forecast causes the General Fund budget position to be slightly negative, the Administration believes that budget balancing solutions can be identified over the next two months to close the 2013-2014 gap without reducing or eliminating General Fund services to our community, bringing the balance to zero.”<sup>23</sup>*

Apparently “Ability to afford” does not relate to “causing” a deficit as they put in \$11.1 M for employee compensation increases, which made a \$5.6M surplus into a \$5.5M deficit. Showing that it is ok to make cuts in one area to help afford expenditures in another.

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<sup>23</sup> Page 23 CMO Budget Request 2/28/13

What is the best interest and promotes the welfare of the public?

Subject #3

The Welfare of the Public

§ Unlike its predecessor, Section 1111, as amended by Measure V, requires that the panel's decisions are "in the best interest and promotes the welfare of the public."<sup>24</sup>

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<sup>24</sup> City Presentation Regarding the Interest Arbitration Process 4/29/13

## What is the best interest and promotes the welfare of the public?

1. Public Safety CSA OUTCOME “The Public Feels Safe Anywhere, Anytime in San Jose.”<sup>25</sup>

2. Being Competitive in the marketplace?

- “Looking forward, the *Administration’s goal is to build capacity to meet the City’s basic service delivery needs, maintain competitiveness as an employer, and address the significant backlog of unmet/deferred infrastructure and maintenance needs.*”<sup>26</sup>
- “... enhance the City’s ability to be a *competitive and attractive employer* for the talented and skilled staff we need to deliver community services...”<sup>27</sup>
- *In order to maintain service level stability, it is very important that we retain and attract quality employees.*”<sup>28</sup>

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<sup>25</sup> Page VII-27 CMO Proposed Budget Document 5/1/13

<sup>26</sup> Page 6 CMO Budget Request Memo 2/28/13

<sup>27</sup> Page 3 CMO Proposed Budget Document 5/1/13

<sup>28</sup> Page 6 CMO Proposed Budget Document 5/1/13



## What is the best interest and promotes the welfare of the public?

- When discussing the Employee Compensation Planning Reserve Memo states, “*We included this reserve for the first time in many years in recognition of our need to remain competitive as an employer in a fiscally responsible manner so that we can continue to retain and attract the talent and skills necessary for quality service delivery. I regard this as an essential component for our long-term organizational stability.*”<sup>29</sup>

I do not see anything in the proposed goals and objectives to achieve equity across the workforce. Where in the proposed budget does the Manager allocate funds to achieve her 2/28 stated goal of “maintaining competitiveness as an employer” for police services?

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<sup>29</sup> Page 7 CMO Proposed Budget Document 5/1/13

## What is the best interest and promotes the welfare of the public?

3. *“Police Overtime - Allocates \$4.0 million from the Police Department Overtime Earmarked Reserve, established in the 2012-2013 Mid-Year Review. Although the Department is conducting recruit academies to hire for sworn vacancies, the Department is anticipated to begin 2013-2014 with at least 80 sworn vacancies. As an interim strategy to meet service delivery needs until the Department is staffed at authorized levels, the overtime funding will be used in 2013-2014 to continue backfilling for vacant patrol positions while they are bring hired and trained, maintain targeted enforcement of high crime activity through suppression cars, conduct high profile investigations, and backfill for civilian vacancies as needed.”*<sup>30</sup>

What is timeline for filling 80 vacancies given current academies and attrition? Is it realistic? How long can we rely on overtime to effectively be a strategy to police our city?

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<sup>30</sup> Page 18 Proposed Budget Document 5/1/13

Trying to find \$20M in capacity if you actually wanted to do it.

The City Manager stated that, “we are probably as low as we want to go”<sup>31</sup> when asked about our current staffing levels. Her proposed budget states that she anticipates 88 vacancies at the beginning of next FY. She further stated that larger increases, “would help the retention problem.”

How does rapid depletion of trained officers through attrition via resignation, retirements and lateral moves help promote the welfare of the public? Is it not in the best interests of the public in San Jose to have an adequately staffed PD with the best personnel possible?

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<sup>31</sup> Debra Figone testimony 5/7/13



## What is the best interest and promotes the welfare of the public?

There have been several examples given as to what would happen if the 10% being requested was awarded. I would suggest that each of the examples given were designed to show more negative impacts to residents than are necessary.

There are several scenarios to come up with approximately \$20M, which would have negligible impact on existing service levels and be funded by ongoing revenues.

## What is the best interest and promotes the welfare of the public?

### Option 1

Service Level Enhancements	\$5.7
2012/13 One Time Funded Services	\$3.8
Budget Stabilization Reserve (50% over two years)	\$2.0
Employee Compensation Planning Reserve (50%)	\$5.6
City Hall refinance (50% each year)	\$3.5
Total	\$20.6

### Option 2

Deferred Infrastructure Reduction (50% each year)	\$7.5
Employee Compensation Planning Reserve (50%)	\$5.6
"Essential Services Reserve" (50% each year)	\$1.0
Budget Stabilization Reserve	\$4.0
City Hall refinance (50% each year)	\$3.5
Total	\$21.6

### Option 3

SARA lawsuit resolves favorably (50% of projected one time and 100% of projected ongoing)	\$9.5
City Hall refinance (50% each year)	\$3.5
Service Level Enhancements	\$5.7
"Essential Services Reserve" (50% each year)	\$1.0
Total	\$19.7

### Option 4

Contingent upon adoption of new sales or other tax by voters	\$20.0	This is less than 25% of lowest projection of ongoing revenue
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What is the best interest and promotes the welfare of the public?

My conclusion: The City's financial condition is sound, they have the ability to pay with ongoing revenue and without reducing existing services and it would be in the best interest and promote public welfare to retain a well trained police force.

It is just a matter of priorities.